



**MINUTES  
FREMONT PLANNING COMMISSION  
REGULAR MEETING OF MARCH 11, 2004**

CALL TO ORDER: Chairperson Weaver called the meeting to order at 8:05 p.m.

PRESENT: Chairperson Weaver, Vice Chairperson Wieckowski, Commissioners Harrison, King, Lydon, Natarajan, Sharma

ABSENT: None

STAFF PRESENT: William Meeker, Planning Director  
Jeff Schwob, Deputy Planning Director  
Larissa Seto, Senior Deputy City Attorney II  
Norm Hughes, City Engineer  
Barbara Meerjans, Associate Planner  
Alice Malotte, Recording Clerk  
Chavez Company, Remote Stenocaptioning  
Walter Garcia, Video Technician

**Chairperson Weaver** welcomed new Planning Director, William Meeker.

**Planning Director Meeker** stated that he came to the City from the City of Redondo Beach, with 25 years experience in Planning.

APPROVAL OF MINUTES: Regular Minutes of February 26, 2004 were approved with the following changes:  
Page 11, Commissioner Sharma's comments under Information from Commissioners: "Commissioner Sharma stated that the handbook for the Rules and Procedures of the City Council was ~~not~~ appropriate . . . For the record, he stated that he wanted ~~separate~~ rules and procedures to be created under which . . ."  
Page 1: Commissioner King's absence should show excused.

**CONSENT CALENDAR**

THE CONSENT LIST CONSISTED OF ITEM NUMBER 2.

IT WAS MOVED (HARRISON/NATARAJAN) AND UNANIMOUSLY CARRIED BY THE FOLLOWING VOTE (6-0-0-0-1) THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTION ON ITEM NUMBER 2.

**Vice-Chairperson Wieckowski** recused himself because he had an economic interest within 500 feet of the project site.

**Item 2. EGGERS REZONING - 3735 / 3767 / 3803 / 3851 EGGERS DRIVE - (PLN2004-00169)** - to consider a rezoning of four contiguous parcels on Eggers Drive from R-G-29 to R-3-18 for consistency with the City's certified Housing Element. A Mitigated Negative Declaration has been prepared for the project.

## **MODIFICATION TO STAFF REPORT**

**DELETE** following paragraph from top of page 3. (The paragraph at the bottom of page 2 was repeated twice by mistake)

~~Land Use Element Policy LU 1.22: Multi family housing units shall be developed with consideration given to the relationship to adjacent development. Particular attention should be given to the style of roofs, with flat roofs discouraged except where they are usable outdoor space.~~

**ADD** following paragraph on page 4 before **Enclosures:**

**Response from Agencies and Organizations:** The Valley Transit Authority (VTA) has commented, indicating that they do not have concerns relating to the proposed project. No other response or comment has been received at the time of publication of this report.

**HOLD PUBLIC HEARING;**

**AND**

**RECOMMEND THE CITY COUNCIL FIND THE INITIAL STUDY HAS EVALUATED THE POTENTIAL FOR THIS PROJECT TO CAUSE AN ADVERSE EFFECT, EITHER INDIVIDUALLY OR CUMULATIVELY, ON WILDLIFE RESOURCES. THERE IS NO EVIDENCE THE PROPOSED PROJECT WOULD HAVE ANY POTENTIAL FOR ADVERSE EFFECT ON WILDLIFE RESOURCES. AS A RESULT, RECOMMEND THE FILING OF A CERTIFICATE OF FEE EXEMPTION FOR THE PROJECT;**

**AND**

**RECOMMEND THE CITY COUNCIL ADOPT THE DRAFT MITIGATED NEGATIVE DECLARATION, AND FINDING THAT THIS ACTION REFLECTS THE INDEPENDENT JUDGMENT OF THE CITY OF FREMONT, AND FINDING THERE IS NO SUBSTANTIAL EVIDENCE THAT THE PROJECT, AS MITIGATED, WILL HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT;**

**AND**

**RECOMMEND TO THE CITY COUNCIL APPROVAL OF THE MITIGATION MONITORING PLAN FOR PLN2004-00169;**

**AND**

**FIND PLN2004-00169 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE AND HOUSING ELEMENT CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT;**

**AND**

**RECOMMEND PLN2004-00169 TO THE CITY COUNCIL IN CONFORMANCE WITH EXHIBIT "A" (REZONING MAP.)**

The motion carried by the following vote:

AYES:	6 – Harrison, King, Lydon, Natarajan, Sharma, Weaver
NOES:	0
ABSTAIN:	0
ABSENT:	0
RECUSE:	1 - Wieckowski

## PUBLIC COMMUNICATIONS

### ORAL COMMUNICATIONS

#### PUBLIC HEARING ITEMS

- Item 1.** **VISTA GRANDE – 44110 Hunter Lane – (PLN2003-00078)** - to consider revised Preliminary Grading Plan for Vesting Tentative Map Tract 6546 for the approximately eleven acre site (APNs) 513-0325-005-00 and 513-0325-006-00) in the Mission San Jose Planning Area. A Mitigated Negative Declaration has been prepared for this project.

**Commissioner Harrison** asked that Senior Deputy City Attorney Seto frame the issue to be decided.

**Assistant City Attorney Seto** clarified that this was a proposal to make revisions to a previously approved grading plan, which was approved many years ago by the Planning Commission and City Council. This project had vested rights under State law to proceed. However, if the modifications to the grading plan were not approved, the applicant would have the legal right, under State law, to proceed with the previously approved plans and configurations.

**Commissioner Sharma** disclosed that he had spoken with Dr. Karipineni by telephone.

**Dr. Ramesh Karipineni**, applicant, introduced his team members and stated that the staff report was very comprehensive. He stated that the proposed minor revisions to the approved preliminary grading plan were made with guidance by City staff, which would make the project better.

**David Wilson**, project Civil Engineer with HMH Engineers, explained that the project was reduced from 19 to 17 lots to improve some density difficulties. The two eliminated lots were a flag lot located at the highest elevation in the project and one lot near Hunter Lane that had accessibility constraints. The street would stay in its original configuration, but the lot lines would be slightly adjusted and the grading would allow the slopes of the lots to more naturally conform to the existing grades and would provide smoother transitions. Drainage would be improved and the site would be balanced with respect to grading.

**Commissioner Natarajan** asked if the grading exercise was for the entire subdivision and if it took into account the individual lots. Was an architectural design and engineering exercise undertaken to determine if houses would fit on these lots, given the setbacks and the hillside grading requirement? She feared the grading would force home designs that would flow down across the hillside contours, which would not comply with the City's hillside policy.

**Mr. Wilson** replied that she was correct, but much thought was put into what would need to be done to allow development of each lot, i.e., maximum amount of cut and fill allowed (both volume and depth), retaining wall heights, and pony wall height restrictions. No architectural floor plans or designs were created, but the footprint and how the floor areas would fit into the hill, itself were evaluated. He believed that the criteria associated with the Hillside Development Policy could be accommodated by a custom home design.

**Chairperson Weaver** opened the public hearing.

**Susan Gearhart**, representing Friends of the Hill Area, spoke to the hill area initiative, Measure T. She believed that the topography of the land should not be altered, as it would with this grading plan. She would like to see how this plan would look under Measure T, although she acknowledged that it had not been codified. She suggested that the Commission read the Cotton Shires report, which recommended that the home foundations

and grading plan be submitted together. She wanted to know if this type of cut and fill had been done successfully before on similar slopes.

**Commissioner Sharma** commented that developments had already occurred in the area. He asked the speaker if she was aware of any problems associated with these developments.

**Ms. Gearhart** opined that Measure T passed to visually safeguard the hills, because of the large houses being built so high in the hills. She felt that Measure T should be taken into consideration when approving the size, etc., of the homes in this development.

**Commissioner Harrison** asked when Measure T was supposed to take effect. Since the applicant's grading plan was approved before Measure T was approved, how did Measure T relate to the development?

**Ms. Gearhart** replied that it was supposed to take effect 10 days after the County Registrar's Office had approved the final vote count. She understood that the grading plan stood, as approved. Measure T would affect only subsequent approval of any aspect of the development. She stated that she liked this plan better than the previously approved plan.

**Commissioner Harrison** asked staff if **any** change had to be considered under Measure T or did it affect just components that were changed.

**Assistant City Attorney Seto** replied that the applicant had the right, under State law, to develop the vesting map as originally approved. If the grading plan and final map were approved, as individual property owners came forward with design for their custom homes, Measure T would require that they comply as much as they could with it. Protecting views and other issues would be analyzed with regard to Measure T.

**Commissioner Harrison** asked if that would occur 17 times as each house came forward and would staff or the Planning Commission make those decisions, based upon Measure T.

**Associate Planner Meerjans** stated that any home over 7500 square feet would come before the Planning Commission.

**Commissioner King** asked what the status was of Measure T. He asked if this project had not been approved before the approval of Measure T, would all of the project have had to comply with Measure T if it were to come to the Commission today, and, in substance, did it comply with Measure T.

**Deputy Planning Director Schwob** stated that there were two components, which included changes in the General Plan text and changing the zoning ordinance to incorporate the provisions of Measure T. The General Plan text changes were given to the Commissioners as they were formatted. The zoning changes would come to the Planning Commission later in the year in the form of the new toe of the hill line, which would physically change the zoning of the land and the General Plan land use designations as that line moved along the base of the hills. A community communication process would involve explaining how these changes would affect the many property owners in the hills. Commissioner King was correct about how Measure T would affect this project if it had not previously been approved.

**Assistant City Attorney Seto** replied that under Measure T, restrictions concerning minimum lot size would be in effect. If this project came before the Commission after Measure T, with the original 19 lots, it would not be approved, because the individual lots would be too small under Measure T. However, the individual homes would be approved under Measure T.

**Ms. Gearhart** added that Measure T had not been implemented, but “it was legally there.” She asked that the development be “looked at” with regard to the requirements of Measure T.

**Commissioner King** summarized that this project could legally go forward as previously approved, if the change of the grading was not approved. He asked, consequently, did this change make the project better?

**Ms. Gearhart** believed that an analysis of Measure T should be performed by the Commission regarding this project, as the toe of the hill, as depicted in the handout, was not accurate.

**Commissioner King** asked if the change had to comply with Measure T.

**Assistant City Attorney Seto** replied that if a significantly different grading plan was brought forward or if the property were to be subdivided in a significantly different way, the applicant would have to comply with Measure T. However, this was a minor change and the State law carried forward the applicant’s legal right to proceed.

**Commissioner King** asked who determined whether a modification was slight or major. It seemed to him that approval of this proposed modification would bring the project closer to the intent of Measure T. If it were not approved, the original plan would be moved forward.

**Assistant City Attorney Seto** replied that staff made a recommendation, which the Planning Commission and City Council could approve or come to a different determination. If this proposed modification was not approved, the applicant had a legal right to develop this property with 19 lots, rather than the 17 lots they were now proposing. She agreed that the intent of Measure T was better met with this revised grading plan.

**Ms. Gearhart** stated that she agreed, also

**Alan Reeves**, attorney for the applicant, clarified that a specific condition in the vesting tentative map said each lot would be reviewed for conformance with the City’s development standards for hillside development. The City Engineer had to certify on the final map that it substantially conformed to the vesting tentative map. Much geotechnical investigation, along with work with the City’s geotechnical consultant, Cotton Shires and Associates, had been performed, and they had to approve the final improvement plans.

**Commissioner Harrison** asked if the speaker agreed with the letter received from the Alameda County Water District.

**Mr. Reeves** replied that he expected the City Engineer and the City’s Geotechnical consultant to take into consideration the issues raised in the letter when approving the changes. However, the neighboring landowner did not “have an absolute veto on approval of the plans.”

**Chairperson Weaver** closed the public hearing.

**Commissioner Natarajan** asked if the grading plan was approved, would the City Engineer certify the tentative tract map and the City Council approve the final map?

**Assistant City Attorney Seto** replied that she was correct.

**Commissioner Natarajan** asked how the conditions associated with the original planned district translated to the present, i.e., Condition 20, which required SPAR review when SPAR no longer existed. Would Condition 25, which required that a California licensed architect

design each home, still be in effect? She asked if any building envelopes had been identified on the site and if design guidelines had been created for the subdivision.

**Deputy Planning Director Schwob** replied that with the elimination of the Site Plan and Architectural Review Board, those projects would come to City staff through the Development Organization for review, unless the homes were over 7500 square feet, in which case, the Planning Commission would review. He expected that Condition 25 would still stand.

**Associate Planner Meerjans** replied that there were no guidelines other than the hill area development policies.

**Commissioner Sharma** believed that Commission approval would make a better project. He wondered why the Alameda County Water District was bringing up these issues at this time. He asked if his interpretation of the letter was correct that the ACWD had no big issue.

**City Engineer Hughes** replied that the mitigation details were not approved in the original project. The geologists for the City and the Alameda County Water District geologists were working together and he was certain that the grading would not proceed until a conclusion was reached that satisfied all parties. Commissioner Sharma's analysis of the letter was correct.

**Commissioner Sharma** reiterated that this was a better plan in every way. He would vote to approve the grading modifications.

**Vice-Chairman Wieckowski** asked if it was practical for the City to perform an analysis, as suggested by Ms. Gearhart. How long would it take or delay the project?

**City Engineer Hughes** noted that approval of this project was made 10 years before Measure T was approved. However, the development of each lot would be taken as a new application and would be controlled by Measure T.

**Vice-Chairman Wieckowski** argued that the grading approval should be delayed until the implementation of Measure T had been completed to provide more information upon which the Commissioners could make a more informed decision. Which of the lots would be affected by the new hillside line?

**City Engineer Hughes** stated that the developer already had approval for 19 lots. What was before the Commission was not if this development was in conformance with Measure T, but if it was in conformance with the original approval, which it was. Where possible, the actual building areas would be flatter, the sites would make it easier for the architect to create a design that fit the existing slopes of the land, and, within the confines of the previous approval, as much as possible was done to work towards a creating a project that would make it as easy as possible for the new buyers to have a home that would conform to Measure T. The building areas were, by and large, less than 20 percent. There were steeper slopes on some of the lots above the building pads that had been previously approved.

**Commissioner Harrison** asked if Commissioner Lydon, as a former City Fire Chief, might want to add any special conditions regarding construction in the hills.

**Commissioner Lydon** replied that access was the key. Dr. Karipineni's existing home had always been a concern to emergency responders, given its location and access.

**Commissioner Harrison** agreed that this was a better project, and stated that he would support it so that it could move forward.

**Commissioner Natarajan** thanked the applicant for working with staff when it did not have to do so. Many lessons had been learned through the planned districts that had been approved in the hillside area. Every time a lot was created with cross slopes and access coming into the cross slopes, the architect had difficulty with the design without designing a flat-pad house. She anticipated this development would be no different from all the others because of the way that the lots had been created 12 years ago. She would support the grading changes, as proposed. She asked that certain conditions be required for each of these lots, such as:

- Story poles for every house before construction
- California licensed architect to design each home
- Planning Commission approval for each home
- Construction hours should be the same as presently required
- Hold off DO review until Measure T was worked out to be certain that individual homes were in compliance

IT WAS MOVED (NATARAJAN/SHARMA) AND CARRIED BY THE FOLLOWING VOTE (6-1-0-0-0) THAT THE PLANNING COMMISSION HOLD PUBLIC HEARING;

**AND**

**FIND THE INITIAL STUDY CONDUCTED FOR THE REVISED PRELIMINARY GRADING PLAN HAS EVALUATED THE POTENTIAL IMPACTS THAT COULD CAUSE AN ADVERSE EFFECT, EITHER INDIVIDUALLY OR CUMULATIVELY, ON WILDLIFE RESOURCES. THEREFORE, FIND THAT THERE IS NO EVIDENCE THE PROJECT WOULD HAVE ANY POTENTIAL FOR ADVERSE EFFECT ON WILDLIFE RESOURCES AND RECOMMEND THE FILING OF A CERTIFICATE OF FEE EXEMPTION FOR THE PROJECT;**

**AND**

**ADOPT THE DRAFT NEGATIVE DECLARATION FOR THE PROJECT FINDING THAT THERE IS NO SUBSTANTIAL EVIDENCE THAT THE PROJECT WILL HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT AND FURTHER FINDING THAT THIS ACTION REFLECTS THE INDEPENDENT JUDGMENT OF THE CITY OF FREMONT;**

**AND**

**FIND THAT THE PROPOSED PROJECT IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S HOUSING AND HEALTH AND SAFETY CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT. THE PROJECT CONFORMS TO THE GOALS AND POLICIES AS ENUMERATED IN THE STAFF REPORT AND FINDINGS EXHIBIT ADOPTED/RECOMMENDED HERewith;**

**AND**

**APPROVE PLN2003-00078, AS SHOWN ON EXHIBIT "A", SUBJECT TO FINDINGS AND CONDITIONS IN EXHIBIT "B".**

The motion carried by the following vote:

AYES:	6 – Harrison, King, Lydon, Natarajan, Sharma, Weaver
NOES:	1 - Wieckowski
ABSTAIN:	0
ABSENT:	0
RECUSE:	0

## **MISCELLANEOUS ITEMS**

Information from Commission and Staff:

- Information from staff: Staff will report on matters of interest.

**Deputy Planning Director Schwob** stated that the elimination of fees were being recommended to the City Council for the Amusement and Recreation Zoning Text Amendment that was recently before the Commission. Upon review, the City was collecting approximately \$3,000 dollars a year, which was not very much when collection costs were taken into consideration.

**Planning Director Meeker** announced that the March 25<sup>th</sup> meeting was cancelled. He reminded the Commission and the public that Mayor Gus Morrison would give the 2004 State of the City address on March 31<sup>st</sup> from 6:30 to 7:30 p.m. in the council chambers.

- Information from Commission: Commission members may report on matters of interest.

Meeting adjourned at approximately 9:10 p.m.

SUBMITTED BY:

APPROVED BY:

Alice Malotte  
Recording Clerk

William Meeker, Secretary  
Planning Commission